(2)

CF0000063095

IN THE HIGH COURT OF THE JUDICATURE AT JABALPUR (M.P.)

Criminal Appeal No. 722 /2000 Division Bench (Criminal)

APPELLANT :- Labduram @ Sukhram, S/o Budiya Ram Manjhi, Aged about 54 years R/o Gram- Bule, Dufakhar, Thana-Lakhanpur, Distt.- Sarguja (M.P.)

2708

Filed on 10/3/2000 by Shri R.K. Jain Advocate

M.A.R.

VERSUS

RESPONDENT :- The State of M.P. Through P.S. Lakhanpur. Distt.- Sarguja (M.P.)

S.T.No. 275/98

U/S. 302 of I.P.C.

P.S. Lakhanpur, Distt.- Sarguja (M.P.)

CRIMINAL APPEAL UNDER SECTION 374 OF Cr.P.C.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A. No. 722/00 **सन्** ~~200~~

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. V.K. Shrivastava, JJ

26-10-2006

Smt. Kiran Jain, counsel for the appellant.

Shri G.D. Waswani, Govt. Advocate for the State/respondent.

Oral Judgment dictated on *Dais*.

PER L.C. BHADOO, J.

This appeal is directed against the judgment of conviction and order of sentence dated 31st January 2000 passed by the Sessions Judge, Surguja in S.T. No.275/98 whereby learned Sessions Judge after holding the accused/ appellant guilty for commission of offence under Section 302 of the I.P.C. sentenced him to undergo imprisonment for life and to pay a fine of Rs.500/-, in default of payment of fine to further undergo S.I. for 6 months.

Case of the prosecution, in brief, is that in the night of 9-4-98 accused Labdu Ram attacked deceased Banshu with a wooden club of Sarai, as a result of which he sustained injuries on the head and back, thereafter, the accused went to the house of PW-1 Jhagru, brother-in-law of Banshu and informed him about the incident. In the meantime, wife of the deceased namely Sajaani Bai (PW-2) reached to the scene of occurrence. They took Banshu to the house, where, he succumbed to the injuries in the same night. The matter was reported by PW-1 Jhagru in the Police Station Lakhanpur. Merg intimation (Ex.-P/2) was reduced into writing and based on that First Information Report Ex.-P/1 was registered under Section 302 of the I.P.C. The I.O. left for scene of occurrence, after giving notice Ex.-P/6 to the Panchas, prepared inquest report (Ex.-P/7) of the body of Banshu. He also

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prepared the site plan Ex.-P/8. While in the police custody, the accused gave memorandum Ex.-P/3, in pursuance of that he got recovered weapon of offence i.e. wooden club and same was taken into possession under Ex.-P/4. The body of deceased Banshu was sent for postmortem examination to the Government Hospital, Udaipur, where Dr. T.N. Mahingleshwar (PW-7) conducted the postmortem, prepared postmortem report (Ex.-P/13) and opined that cause of death was coma due to brain haemorrhage. The death was homicidal in nature.

After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate, 1st Class, Ambikapur, who in turn, committed the case to the Sessions Judge, Ambikapur, where the prosecution examined 8 witnesses in order to establish the charge against the accused. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied his involvement in the crime.

We have heard learned counsel for the parties.

At the outset, learned counsel for the accused/appellant did not dispute homicidal death of deceased Banshu, as also involvement of the accused in the crime in question. However, she argued that as the deceased was abusing in front of the house of the accused, in a sudden fight, all of a sudden, the accused attacked the deceased with club once on the head and once on the back, without intention to cause his death, thereafter he went and informed brother-in-law of the deceased, therefore, the offence against the accused does not travel beyond Section 304 Part-II of the I.P.C.

On the other hand, learned counsel for the State/respondent supported the judgment of the trial Court.

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From the evidence of PW-3 Budhram and PW-4 Shobhnath, who witnessed the accused assaulting the deceased with club, as also from the evidence of Dr. T.N. Mahingleshwar (PW-7), who has stated that there was injury on the head, cause of death was brain haemorrhage & coma, injury on the head was fatal & death was homicidal in nature, it is established that the death of the deceased was homicidal in nature.

PW-3 Budhram and PW-4 Shobhnath, who were with the deceased, have categorically stated that the accused assaulted the deceased with wooden club, as a result of which he sustained injury on the head & back and fell down. Therefore, from the above evidence, involvement of the accused in attacking the deceased is established.

Now, coming to the argument of learned counsel for the accused/ appellant, if we examine the evidence of PW-3 Budhram, he has stated that in the fateful night he was consuming liquor at his residence, at that time, deceased Banshu along with one Garra came to his house and demanded liquor, as there was only one bottle of liquor at his residence, therefore, both of them sat at his residence and consumed liquor. When he was going along with deceased Banshu to leave him at his residence, on the way, the accused met him on which deceased Banshu asked the accused that he is very powerful, he was trying to take Banshu from that place but he did not move. Thereafter, Labdu attacked the deceased with a Lathi on head and ran away. Therefore, the above evidence suggests that the accused was at his residence, in the first instance, the deceased asked the accused that he is very powerful on which dispute started, the accused brought a club from the house and assaulted the deceased on the vital part of the body i.e. head only once, as a result of which the deceased died in the night at his

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residence. It has not come on record that there was any animosity between the two. When the deceased started talking irrelevant, the accused brought a club and assaulted the deceased on the head which proved fatal and Banshu died in the night. Therefore, from the above facts, it cannot be inferred that the accused assaulted the deceased with intention to cause his death. However, knowledge to the accused can safely be inferred from the facts that the manner in which the accused attacked the deceased on the head with club, the accused had knowledge that by attacking the deceased on the vital part of the body i.e. head, he may likely to cause the death. Therefore, knowledge can be attributed to the accused.

In the result, conviction of the accused under Section 302 of the I.P.C. cannot be sustained. Accordingly, the appeal partly succeeds while setting aside conviction and sentence under Section 302 of the I.P.C.. The accused/ appellant is convicted under Section 304 Part-II of the I.P.C. and sentenced to undergo R.I. for 7 years. As per the judgment of the trial Court, the accused is in detention since 16-7-98 thereby he has already completed detention for a period of 8 years, as such, the accused has already served the sentence, therefore, he be set at liberty forthwith, if not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
V.K.Shrivastava
Judge

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